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ABSTRACT

This booklet, designed for use by Missouri parents and schools, provides information on using mediation as a non-adversarial alternative to resolving disputes in special education. It compares mediation with impartial due process hearings and complaint investigations, and describes the special education mediation process as voluntary for parents and school personnel, confidential, a no-cost service, and an alternative that does not affect the status of a due process hearing or formal complaint. The benefits of mediation are explained, along with the appointment of a mediator, the role of the mediator as a facilitator, and the roles of parents and schools. Tips are provided for preparing for the mediation session, and the stages of mediation are described. Mediation policies are listed, including the eligibility of disputes that are only applicable for a due process hearing, the prohibition of any video- or audiotape recording of mediation proceedings, the designation of a person by each party who has the authority to make final resolution decisions, the prohibition of legal participation and attendance, the provision of signed copies of the agreement to each party, the exclusion of the mediator from subsequent actions, and the cancellation of a due process hearing if requested. (CR)

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# Special Education

# Mediation in Missouri

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**Managing parent and school conflict through effective communication**

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# *Mediation in Missouri*

If conflict occurs between parents and schools regarding the educational program for a special education student, mediation may provide a non-adversarial alternative to resolve disputes.

**Mediation** is a structured, yet informal, voluntary process in which an impartial third party mediator helps parents and schools, who are experiencing conflict, to reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and schools focus on their common interest—the student.

**M** utual agreement by parents and schools to mediate

**E** conomically sound choice for all parties

**D** ecisions are made by the conflicting parties

**I** ndividuals available to mediate are trained and include many with experience and knowledge of special education law

**A** ctions will be jointly determined

**T** ime needed for mediation takes less than a day

**I** dentifies the student's educational needs

**O** pen communication is the key to reaching agreement

**N** eutral third party mediates the dispute

# *Comparing Systems*

| Mediation | Impartial Due Process Hearing | Complaint Investigation |
|---|---|---|
| Non-adversarial | Adversarial | Adversarial |
| Informal | Formal | Formal |
| Confidential | Confidential | Confidential |
| Supports mutual problem solving | Solution ordered by hearing officers | Commissioner makes final determination |
| Mediation session less than a day | Hearing may last several days | Process may take several weeks |
| Supports open communication | Communication stifled | Communication with investigator |
| Agreements made jointly | Law-based solution | Determined by allegations |
| If no agreement reached, can pursue other systems | Decision binding. However, can be appealed to state or federal court | Decision can be appealed to U.S. Department of Education |

State regulations require completion of mediation within thirty days of agreement to mediate. Federal regulations have established a forty-five-day timeline for due process hearings. However, legal procedures and unforeseen circumstances may cause delays. Formal complaints are investigated and resolved within sixty days.

# The Special Education Mediation Process is:

Voluntary for parents and school personnel and is not required by law

Confidential, thus encouraging all participants to speak freely

A no cost service to parents and schools provided by DESE

An alternative that does not affect the status of a due process hearing or formal complaint

# Mediation

* May resolve disputes regarding the identification, evaluation, educational placement, or related services for students with disabilities
* Clarifies areas of agreement and disagreement
* Is scheduled concurrent with a request for a due process hearing
* Fosters better relationships between parents and schools
* Is offered free of charge to parties upon DESE's receipt of a due process hearing request



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# Appointment of a Mediator

DESE maintains a list of qualified mediators. When both parties in a dispute agree to mediate, they need to jointly agree on and notify a mediator. DESE will then confirm the appointment, and the mediator will notify the parties of the time, date, and location of the appointment.

## The Mediator

A mediator is a neutral third party trained in communication, problem solving, negotiation skills, and specific mediation techniques. The mediator acts as a facilitator to help parents and schools resolve conflicts. The mediator:

* Works with the parties to determine who will attend the session
* Educates the parties about the mediation process
* Encourages open and honest communication
* Establishes the ground rules for all parties to follow
* Guides the process
* Ensures that each party is heard
* Rephrases information and summarizes positions
* Clarifies issues of law and regulation
* Facilitates the writing of the agreement

# Roles of Parents and Schools

Parents and school personnel are the active participants in the mediation process. It is in the best interests of all parties, including the student, to explore mediation as a means to an

informal resolution of the conflict. The student's educational future is at stake. If these factors are kept in mind from the onset of mediation, success will more likely occur.

* Approach mediation in good faith
* Be willing to give at least a day to the process
* Without interruption, present your view of the issues and listen to the opinions of the other side
* If needed, meet separately with the mediator
* Seek clarification of the discussion or materials
* Deal with issues, not personalities
* Remember, disputing parties have complete decision-making power

# *Prepare for the Mediation Session*

* Keep your schedule free the entire day of the mediation
* Put aside personality conflicts and center on the educational interests of the student
* Be familiar with all documents related to the dispute, including the Individualized Education Program (IEP);
* Organize your information and materials
* Ask yourself these questions:

  ***What do I/we want to accomplish?***

  ***What do I/we want the other party to do?***

  ***Are there alternative ways to resolve the conflict?***

* Be honest and willing to listen
* Be open to alternatives

# The Mediation Session

Every mediator has his/her own personal style of conducting a mediation. Mediation may include the following stages:

1. **Introduction**: The mediator will explain the process, set the ground rules for all parties, and respond to questions.
2. **Identification of Positions**: Each party will have an opportunity, without interruption, to identify positions and share information. The mediator may seek additional data or summarize the issues.
3. **Expression of Interests**: At this stage, the mediator helps the parties identify their interests (those factors underlying their positions). Goals, needs, desires, hopes, and fears are expressed, explored, and clarified.
4. On occasion, positions and underlying interests may not be clear. Opportunity is provided for each party to **"caucus"** with the mediator for the purpose of sharing information or seeking clarification about the issues. The mediator will not disclose information from caucus sessions without consent.

   A **"recess"** may be requested by any participant if emotions run high during a mediation session. This "cooling off" period provides an opportunity for all parties to communicate separately, rethink their strategies, and absorb what has transpired.
5. **Creating Alternatives**: Once the basic positions and underlying interests have been identified, discussed, and clearly understood by all parties, the mediator will help the parties develop options and make decisions for resolving the conflict. Either party may propose solutions at any time during an open session or in a caucus.

6. **Developing and Writing a Plan**: The ultimate goal of mediation is to seek a written resolution to the conflict. The parties establish the terms of the agreement. The mediator writes the final document, which is signed by the parents, school representatives, and mediator. Each party retains a copy of the agreement. If an agreement involves making changes to a student's IEP, an IEP meeting should be convened as soon as possible.
7. **Implementation**: In order for the final agreement to work effectively, its provisions must be implemented. The signed document demonstrates a commitment by both parties to abide by the conditions of the agreement. Ultimately, it is the responsibility of the parties to fulfill their obligations.

# *Mediation Policies*

1. Only disputes that are applicable for a due process hearing are acceptable cases for state-paid mediation. However, parties can decide to go to mediation on other issues at their own cost.
2. No video or tape recording of the mediation proceedings will be made.
3. Each party should designate a person who has the authority to make final resolution decisions.
4. Since mediation is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal participation and attendance during a mediation session is prohibited.

5. The mediator will provide signed copies of the agreement to each party.
6. The mediator will be excluded from subsequent actions—complaint investigations, due process hearings, or legal proceedings.
7. A due process hearing, requested before mediation, may be canceled if the request is withdrawn. Caution must be taken to ensure that all legal time frames are followed.
8. If for any reason the mediation fails, the mediator will provide each party with a statement clarifying that the mediation was unsuccessful.

# Conclusion

Mediation encourages parents and schools to work together in a partnership to resolve conflicts. The process is a suitable alternative to a costly and stressful due process hearing or formal complaint. Successful mediation reinforces educational opportunities and services for students with disabilities.

*For more information on mediation, contact Special Education Legal Services at DESE's Division of Special Education, (573) 751-0602*

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